



February 4, 2022

Office of Associate Chief Counsel (Income Tax and Accounting)
CC:PA:LPD:PR (REG-109128-21)
Room 5203
Internal Revenue Service, P.O. Box 7604
Ben Franklin Station, Washington, DC 20044

Submitted Electronically via regulations.gov

Re: Comments on NPRM Information Reporting of Health Insurance Coverage and Other Issues (REG-109128-21; RIN 1545-BQ11)

Dear Sir or Madam:

Business Group on Health writes in response to the Internal Revenue Service's request for comments pertaining to the Affordable Care Act reporting requirements covered in the notice of proposed rulemaking (NPRM) listed above. We appreciate the Service's continued attention to non-final guidance and opportunities for administrative simplification.

Business Group on Health represents a [network of more than 440 of today's largest and most progressive employers](#), including 74 Fortune 100 companies, providing health coverage for 60 million workers, retirees and their families in 200 countries. Business Group members – innovative employer plan sponsors – are leading the way and encouraging others by providing strong health plan offerings, adopting alternative payment models, managing the total cost of care, promoting health equity, furthering population health, and keeping people well.

The Business Group was one of the very few stakeholders, as mentioned in this NPRM, that provided [comments to the 2016 proposed regulations regarding TIN solicitations](#). We believe those comments remain well-made and informative. However, subsequent employer plan sponsor experience and intervening legislation under the Tax Cuts and Jobs Act (TCJA) justify a more significant reconsideration of the TIN solicitation proposed

rules under IRC Section 6055. We would be happy to discuss all of our comments or any related matters further.

I. Business Group on Health appreciates the Service's proposed adoption of standards aimed at reducing administrative burden.

Since the start of the Affordable Care Act (ACA) implementation, employer plan sponsors have appreciated, and many have needed, the Service's allowances to ease the administrative burdens of ACA reporting under IRC 6055 and 6056, and other provisions. Employers have worked in earnest to comply with the ACA's many requirements, but continue to experience challenges from time-to-time with timely reporting. To that end, employer plan sponsors continue to innovate and provide more efficient and effective communications with their employees and family members. We believe the Service's proposals allowing for automatic 30-day extension for furnishing information returns (e.g., Forms 1095-B and 1095-C) under IRC 6055 and 6056, and its allowance for alternative methods for furnishing statements under Section 6055 are good flexibility for employer plan sponsors.

While we do not have any specific comments about additional relief or adjustments to these proposals, we encourage the Service to continue to be open to other necessary flexibility.

II. Based on its diminished relevance under the TCJA, the Service should eliminate unnecessary, burdensome, and wasteful requirements related to IRC 6055 TIN solicitation. Employer plan sponsors (and other coverage providers) should be considered to have met "reasonable cause" by performing streamlined and clarified TIN solicitations that take advantage of plan enrollment and/or coverage renewal communications and activities.

This comment is intended to promote as much flexibility for employer plan sponsors as possible in undertaking the TIN solicitation from or on behalf of covered individuals. Below we provide two frameworks for coverage providers to follow and believe that the Service should permit plans to utilize either, both, or a combination in satisfaction of the reasonable cause requirements. In the event the Service receives other comments or determines a means by which more flexibility and less costly, burdensome TIN solicitations could be made by employer plan sponsors, we would expect to be supportive of such comments/means.

Importantly, we appreciate the prior proposals and this renewed effort to align the TIN solicitation rules with health plan operations (versus financial services). However, we were and still are concerned that the 2016 proposed regulation's individualized 75-day deadline is inefficient and burdensome. While electronic systems can be programmed to identify the 75-day period for the person, there are little to no economies of scale or efficiencies to sending out individual second requests, and it does not reflect current industry practices. We implore the Service to address the second request timeline requirement and either consolidate it with the third solicitation or change it to promote "batching" or grouping to enhance efficiency.

For both methods proposed below, we suggest the following common standards:

1. Coverage ending and restarting in the same policy or plan year should be considered continuing coverage for TIN solicitation purposes and not require additional requests than would otherwise be applicable.
2. The solicitation should only need to be made of the responsible individual or person who is the primary eligible individual for the coverage. Plans should not be required to solicit TINs from dependent children, spouses, or other non-primary covered individuals.
3. The TIN solicitation requirement for all full or partial years of coverage received should immediately terminate once the individual is no longer covered by the plan.
4. For any mailed TIN solicitations, we suggest that if a plan provides a phone number and an electronic means (e.g., website) where the TIN(s) may be provided, it should not have to include a return envelope. The complexity and expense is compounded by the inclusion of the return envelope and plans that invest in multiple, modern response methods should be permitted to incentivize use of those methods.

a. Option 1: Enrollment/Application Materials Only TIN Solicitation Method.

As the Service explained in the NPRM, because the TCJA reduced the individual shared responsibility payment to zero, taxpayers do not need the 6055 information to file their annual returns. Additionally, the Service's need for such information also appears to be reduced or eliminated for such tax years. We believe this is an important opportunity for the Service to provide meaningful relief and administrative simplification for employer plan sponsors and other coverage providers.

We note that employer plan sponsors have been undertaking TIN solicitations for many years now and while they could continue to do so at a high cost, this is clearly an area where the Service could reduce the burden and free up resources for other plan improvements. In our view, if a covered person has not provided a TIN at this point, it is

because they are choosing not to or cannot do so. It is not generally because the employers are not compliant with asking for the TINs. The reasonable cause requirements should be revised to reflect this reality and not overburden employer plan sponsors.

We urge the Service to adopt an appropriate, simplified standard for showing reasonable cause in the case of an incorrect or missing TIN by:

1. Defining the “account opening” to be the effective date of the coverage;
2. Permitting the initial solicitation for applicable TINs to be made at the time of plan enrollment (referred to as “application” in the 2016 proposed regulations), regardless of whether that occurs before, after, or at the time of the “account opening”; and
3. Consolidating the second and third solicitations into one subsequent solicitation, which would be satisfied by including a TIN solicitation as part of the following year’s annual enrollment.

We believe it is appropriate and more effective to permit the initial and annual solicitations to be in the same form, manner, and delivery as the enrollment or application itself (electronic or hardcopy/paper). We expect the most prevalent and effective way for plans to capture this information will be to include the request in an electronic enrollment flow or application. The majority of enrollments (whether initial or for adding dependents) occur electronically via a computer or mobile device and allowing reasonable cause to be satisfied solely using such electronic enrollment workflow will be an efficient and effective method.

For individuals who prefer paper, ERISA plans are already generally required to provide hardcopy materials at least upon request. If the plan is providing hardcopy enrollment materials then the initial and annual solicitations would presumably be included with such written materials. We do not believe a return envelope is necessary or appropriate because it fragments the response into its own path for the TIN versus leveraging the response and communication method under the enrollment generally (which, again, must already satisfy certain requirements).

b. Option 2: Updated Traditional TIN Solicitation Method.

As an alternative, we suggest the Service allow plans use a modified, clarified form of the existing regulations and not impose shorter, individual timelines on the solicitations.

Specifically, plans should be able to satisfy reasonable cause through rules that:

1. Define the “account opening” to be the effective date of the coverage;

2. Allow the initial solicitation for applicable TINs to be made at the time of plan enrollment or application (and in the same form, manner, and delivery) regardless of whether the enrollment occurs before, after, or at the time of the “account opening”;
3. Maintain the second solicitation requirement to be performed by the end of the calendar year during which the account is opened, or by January 31 following such year (with an expanded window) for anyone whose account opening is in October, November, or December of the account opening year;
4. Maintain the third-and-final solicitation requirement to be completed by December 31 of the year following the account opening year, and permit this solicitation to be satisfied by either: (i) inclusion of a TIN solicitation in the following year’s annual enrollment; or (ii) a separate TIN solicitation.

III. Permit plans to show reasonable cause by records indicating TIN solicitations were sent generally as part of enrollment materials or a specific solicitation. Do not require copies of individual notices to be maintained.

Plans generally establish templates and distribution lists for each notice, solicitation, enrollment, and other plan communications. We request that it be sufficient demonstration of reasonable cause by a showing that the template material included a TIN solicitation, the date such solicitation or materials including the solicitation was distributed, and that the responsible individual for whom the person with the missing TIN is the primary covered person was on the distribution list. Individualized distribution records with specific, individual copies should not be required.

IV. In the interest of clarity and maintaining good employee-employer/plan relations, we request the Service simplify the contents of the TIN solicitation.

We appreciate that the content requirements for the existing TIN solicitation rules were developed generally for financial institutions with immediate monetary reporting interests. In general, many such arrangements are voluntary for the individual to engage with the institution and the institution is serving as a vendor to the individual. While employment and plan participation is generally voluntary, the employment relationship is meaningfully different than an individual’s relationship with a financial institution.

We believe requiring a plan to include the statement regarding a potential fine under IRC 6723 is off-putting and counterproductive when sent by the employer or plan. It causes confusion and undue stress on the relationship between the employer, plan, and employee (or other covered individual). We request such requirement be removed and replaced by a clear, non-threatening request for the TIN information. Of course, if a plan

wishes to include the potential fine information or explanation of other consequences that may occur for failure to provide the TIN, it should be permitted but not required to do so.

Further, some of the formalities in the existing guidance seems beyond what is needed for plans to effectively collect TINs. For example, we would suggest removing the requirement to use a W-9 Form, W-9S, or W-4 Form (or make a request that is substantially similar) and the requirement for an electronic signature with a declaration and/or penalty of perjury statement for electronic solicitation (in Publication 1586). We believe this is overly complicated, burdensome, and heavy-handed for the purpose of collecting TINs relating to IRC 6055 and may be a deterrent for some respondents.

We request instead that the plan be permitted to provide a means by which the person can submit the TIN(s) (paper, electronic, and/or by telephone) and have a reasonable belief that the person providing the TIN(s) is the appropriate person to do so given the circumstances. For example, in general, electronic submission are done through a password protected portal or require other private identifying information such that TIN information could be reasonably expected to be appropriately provided. For telephone provided TINs, the call may be authenticated by reasonable methods and/or the person may be personally known to a representative of the plan that is collecting the information.

We expect that these changes may improve the response rate and help maintain the unique and important relationship in the employer sponsored plan context.

Thank you for your consideration. We would welcome the opportunity to discuss these comments or any other matters impacting employer plan sponsors. Please feel free to contact me (kelsay@businessgrouphealth.org) or Garrett Hohimer, Director, Policy and Advocacy (hohimer@businessgrouphealth.org) to discuss further.

Sincerely,

Ellen Kelsay
President and CEO